

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

RATE ADJUSTMENT DUE TO EXTRAORDINARY  
OR EXCEPTIONAL CIRCUMSTANCES

Docket No. R2010-4R

RESPONSE OF THE UNITED STATES POSTAL SERVICE  
TO OPPOSITION AND RESPONSE TO ITS REQUEST FOR A STAY  
(October 17, 2011)

On October 4, 2011, the United States Postal Service moved for a stay of the instant proceeding until December 15, 2011.<sup>1</sup> On October 7, 2011, several mailer associations filed a joint opposition.<sup>2</sup> A similar response opposing the Postal Service's motion was submitted by the Public Representative on October 11, 2011.<sup>3</sup> The Postal Service hereby responds to those two pleadings and reiterates its request for a stay.

The two essential points made by the Postal Service in its October 4th motion were (1) that it would be premature to continue this proceeding while there are pending legislative proposals, particularly the President's proposal, that implicate the Postal Service's request for exigent rate relief, and (2) that no harm would result from a stay. As to the second point, both the mailer associations and the Public Representative are utterly silent. For that reason alone, their responses are without merit.

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<sup>1</sup> Motion of the United States Postal Service to Stay its Request for Exigent Relief, Docket No. R2010-4R (Oct. 4, 2011).

<sup>2</sup> Opposition of Alliance of Nonprofit Mailers, American Business Media, Direct Marketing Association, Inc., and Magazine Publishers of America, Inc., to USPS Motion to Stay, Docket No. R2010-4R (Oct. 7, 2011) ("Mailer Associations Opposition").

<sup>3</sup> Response of Public Representative to Motion of the United States Postal Service to Stay its Request for Exigent Relief, Docket No. R2010-4R (Oct. 11, 2011) ("Public Representative Response").

As to the first point, the mailer associations state that “none of the postal bills, as currently drafted, would require the Commission to take any further action on the Postal Service’s exigent rate request in this docket.”<sup>4</sup> This is both technically true and transparently misleading. While neither the pending bills nor the President’s legislative proposal would require immediate Commission action in this docket, they are nonetheless acutely relevant to this docket, as they would affect the Postal Service’s decision on whether and how to pursue its request for exigent rate relief.

The mailer associations further argue that “the ultimate outcome of the legislative process can only be speculated about,” and that “[t]his unknown weighs against, not in favor of, staying the resolution of this proceeding.”<sup>5</sup> In a similar vein, the Public Representative states that “[t]here always will be legislative initiatives before Congress, which may or may not be acted upon,” and characterizes the prospect of legislation being enacted as a “distant chance.”<sup>6</sup> The Postal Service disagrees with these assessments.

As noted in the Postal Service’s October 4th motion, the Joint Select Committee on Deficit Reduction, or the “Super Committee,” is statutorily required to issue, by November 23, 2011, a report that makes recommendations on how to reduce the federal budget deficit. The President has presented a proposal to the Super Committee that, among other things, would result in the immediate implementation of the Postal Service’s request for exigent rate relief in this docket, upon Postal Service request. Thus, there is a significant possibility that the Super Committee’s report will address,

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<sup>4</sup> Mailer Associations Opposition, at 4.

<sup>5</sup> *Id.*

<sup>6</sup> Public Representative Response, at 2.

and potentially resolve, the issues being litigated in this docket. It would therefore be premature for the Postal Service to decide whether and how to move forward with its present request for exigent rate relief until the Super Committee issues its report and the Postal Service has had time to assess the report.

The mailer associations and the Public Representative make a few secondary arguments that are similarly without merit. The mailer associations assert that, because the Commission's Order No. 864 directed the Postal Service to file a statement indicating whether and how it wishes to pursue its exigent request by October 4, 2011, and because that date passed without the Postal Service filing such a statement, this docket is now legally closed. This is an odd view of procedural law. Consistent with past Commission practice, and consistent with practice in other adjudicatory settings, the Postal Service's filing of a motion to stay on October 4th should toll the date for filing the statement requested in Order No. 864.

Both the mailer associations and the Public Representative note that the Postal Service may file a new exigent rate increase request in the future, implying that a stay is unnecessary to preserve the Postal Service's interests. While it is true that the Postal Service may file a new exigent rate increase request in the future, the ultimate outcome of the pending legislative proposals may be that it is more prudent for the Postal Service

to continue pursuing its present request. The Postal Service would like to preserve that option until the current legislative uncertainty is clarified.<sup>7</sup>

The Public Representative also argues that staying the instant proceeding “is inapposite to the intent of the statute, which is to provide rapid financial relief to the Postal Service when circumstances arise that cannot be dealt with in the normal course of business.”<sup>8</sup> The Postal Service agrees that the intent of the statute is to provide the Postal Service with rapid financial relief. However, the stay that the Postal Service has requested is rather minor given the amount of time that has elapsed in this proceeding thus far.

The Postal Service submits that neither the mailer associations nor the Public Representative have shown why the Postal Service’s request for a stay should be denied. The Postal Service respectfully reiterates its request for a stay until December 15, 2011.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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<sup>7</sup> While certain parties may believe that “[t]his case is over” (Mailer Associations Opposition, at 6), that is not the view of the Commission. Order No. 864 plainly states that “the Exigent Request remains pending, and the Commission remains legally obligated to apply its interpretation of the causal nexus of ‘due to’ by granting or denying the Exigent Request if the Postal Service wishes to pursue it.” Order No. 864, Docket No. R2010-4R (Sept. 20, 2011), at 53.

<sup>8</sup> Public Representative Response, at 2.

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